

THE 'BENGHAZI SIX' AND INTERNATIONAL MEDICAL NEUTRALITY IN TIMES OF WAR AND PEACE

By Johanna Michaels Kreisel*

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I. Introduction

On December 19, 2006, a Libyan court condemned six foreign medical workers to death by firing squad for allegedly infecting 426 Libyan children with the HIV virus.¹ Over the course of the eight years before they were sentenced, the foreign medical workers were tortured, suffered undue delays in related judicial proceedings, and faced biased tribunals.²

Libya is not the first country to persecute medical personnel.³ Previously, in the aftermath of the Nuremberg trials,⁴ the international community codified ethical standards enforcing the concept that medical personnel are subject to a higher level of international responsibility.⁵ Specific protections under international humanitarian law grant neutrality to humanitarian and medical workers providing aid in conflict, recognizing that medical personnel's ability to heal outweighs military objectives.⁶ These ethical guidelines, however, often conflict with government and societal regulations and expectations.⁷

Currently, no clear dividing line exists between conflicts of an international character and non-conflict situations.⁸ This leaves medical personnel extremely vulnerable when no international laws guarantee neutrality and instead protect only medical personnel and humanitarian societies who receive authorization to enter the country by parties involved in the conflict.⁹ Medical professionals would benefit from a new definition of medical neutrality that is free from the confines of armed conflict.¹⁰

This article will discuss medical neutrality and the protections afforded to medical personnel in international humanitarian and human rights law. Part IIA provides an overview of the status and history of the Benghazi Six. Part IIB outlines the protections and obligations available to medical personnel under both international humanitarian law and human rights treaties. Part III analyzes the legal recourses that the Benghazi Six and medical personnel in general may employ. Part IV recommends that a stronger set of legal protections and a definition of medical neutrality not linked to armed conflict is needed to prevent further victimization of neutral medical personnel.

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II. Background

A. The Benghazi Six

Five Bulgarian nurses and one Palestinian physician were imprisoned in 1999 for allegedly infecting 426 Libyan children with the HIV virus.¹¹ The larger initial group of detained medical professionals included Libyan, Polish, Hungarian, and Filipino health professionals who worked at the Al-Fateh Children's Hospital in Benghazi.¹² The Libyan government later released all but the five Bulgarian nurses and the Palestinian physician who are known as the Benghazi Six.¹³

Libya postponed trial for the Benghazi Six 13 times,¹⁴ while also denying them access to attorneys until after their hearings began.¹⁵ In addition to other crimes, Libya charged the Benghazi Six with committing acts "leading to uncontrollable killing with the aim of assaulting the country" and "intentional killing with a lethal substance."¹⁶ These charges were levied despite conclusive evidence that the strain of HIV present in the Libyan children was already detected and spreading in the 1990s, prior to the arrival of the Benghazi Six.¹⁷ The charges demonstrate Libya's fear and ignorance toward the HIV infection,¹⁸ and highlights problems created by conflict-defined medical neutrality in which ethics compel medical personnel to deliver care without protection or, at times, in contravention of international law.¹⁹

B. Medical Personnel in Crisis: Legal Rules and International Norms

i. Medical Workers in Peacetime: Exposed and Unprotected

In contrast to the laws of conflict, medical personnel²⁰ are not designated as neutral players²¹ during peacetime.²² In all international human rights law, no single treaty identifies special protections for medical personnel in non-conflict situations.²³

The medical profession has a universal obligation to help those in need that extends beyond state borders.²⁴ If the situation is not recognized by the Geneva Conventions, medical personnel are subject to laws of individual states and are protected merely as civilians under the United Nations human rights treaties.²⁵ For instance, in proclaiming that all individuals are entitled basic political rights, the International Covenant

on Civil and Political Rights (ICCPR) may provide medical personnel the necessary protections.

Specifically, Article 9(1) of the ICCPR defines arbitrary arrest and detention, in addition to unnecessary deprivation of liberty.²⁶ The United Nations Working Group on Arbitrary Detention defines an arbitrary arrest as either procedures contrary to those stipulated by law, or adherence to laws which are incompatible with liberty and security.²⁷ Article 9(3) also mandates that detainees are entitled to a trial within a reasonable amount of time.²⁸

Article 14 of the ICCPR outlines the requirements for a fair and independent trial.²⁹ Article 14(3)b requires that all individuals have access to counsel of their own choosing and adequate time to prepare for trial.³⁰ Article 14(3)g bars self-incrimination and compelled testimony at trial.³¹ Both Article 7 of the ICCPR³² and Article 2 of the International Convention Against Torture and Other Cruel, Inhuman Treatment (CAT) prohibit all forms of torture against individuals.³³

Medical personnel do not receive special designation under International Labour Organization (ILO) treaties but may seek refuge as migrant workers under the International Covenant on the Protection of the Rights of all Migrant Workers and Members of their Families (Migrant Workers' Convention).³⁴ This treaty entitles migrant workers to political and social rights similar to those embodied in the ICCPR.³⁵ Article 16(2) ensures that all migrant workers are free from abuse and arbitrary detention.³⁶ Article 16(4) prohibits countries from exposing migrant workers to arbitrary arrest.³⁷ Article 16(7) guarantees migrant workers the right to communicate with representatives from their respective countries.³⁸ This treaty does not, however, specifically address the unique role of medical or health professionals who are migrant workers.³⁹ Similar to the ICCPR and CAT, Article 10 of the Migrant Workers' Convention prohibits all forms of torture against migrant workers and their family members.⁴⁰ Article 18 also mirrors the ICCPR in condemning arbitrary arrest and detention.⁴¹

ii. International Committee of the Red Cross: Establishing the Fundamentals for Medical Personnel

International humanitarian law establishes guiding principles for states and actors embroiled in international conflict.⁴² The International Committee of the Red Cross (ICRC) significantly contributed to the development of international humanitarian law and enforcement of protections for civilians, humanitarian workers, and medical personnel during armed conflict.⁴³



The ICRC principles of neutrality, impartiality, and independence are the basis for the original Geneva Conventions and subsequent protocols governing the laws of armed conflict.⁴⁴ The Geneva Conventions establish international legal norms to governing war between states⁴⁵ that apply exclusively to international armed conflicts.⁴⁶

iii. Medical Personnel: Protections and Accountability

The history of medical neutrality demonstrates that since 1863, provisions for neutral protection of the sick and wounded form the basis of international humanitarian law.⁴⁷ All four Geneva Conventions have a Common Article 3 that govern hostilities which are non-international in character and prohibit violence to life and person, the taking of hostages, outrages upon personal dignity, and denial of judicial guarantees.⁴⁸

The Additional Protocol II (Additional Protocol II) of the Geneva Convention applies only when guerrilla or dissident armed forces gain sufficient control over a signatory to Additional Protocol II and prevent the government from carrying out "sustained and concerted military operations."⁴⁹ Additional Protocol II does not punish medical personnel for providing care according to medical guidelines; specifically, medical personnel shall receive full protection while carrying out their professional duties.⁵⁰

The original Geneva Convention suggests that medical neutrality was not traditionally limited to armed conflict.⁵¹ The Geneva Conference of 1863 acknowledged full and absolute neutrality for official medical personnel, volunteers, and civilians who provide aid to the wounded.⁵² The Geneva Convention

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of 1864 codified these protections.⁵³ An important aspect of the original Geneva Convention was the neutrality of volunteer aid societies during war and natural disasters, which was included in the later Geneva Conventions and Additional Protocol I.

III. Analysis

A. Libya's Treatment of the Benghazi Six Violated International Human Rights Laws

Unlike the protections available to medical personnel in international and domestic armed conflict, no special protections exist for medical personnel under international human rights law.⁵⁴ Medical personnel may seek relief, however, under the human rights treaties to which the parties are signatories.⁵⁵

i. Article 9 of the International Convention on Civil and Political Rights

Bulgaria could claim the treatment of the five medical personnel violates of Article 9 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁶ Both Libya and Bulgaria are signatories to this treaty without reservations.⁵⁷ Libya violated Article 9(1) of the treaty by subjecting the Benghazi Six to arbitrary arrest and detention.⁵⁸ Libya claimed that in addition to the alleged deliberate infection, the Benghazi Six failed to respect the country's political and religious laws.⁵⁹ The arrest for failure to adhere to Libyan religious beliefs is synonymous to an arrest for holding contrary or different political beliefs, and thus meets the United Nations Working Group's definition of arbitrary.⁶⁰ Documentation proving that the children contracted the illness before the medical personnel arrived in Libya serves as additional evidence that the charges were arbitrary.⁶¹

Libya violated Article 9(3), which prohibits unnecessary delays in judicial proceedings, by postponing the trial of the Benghazi Six on 13 separate occasions.⁶² After their arrest, they did not have access to the Libyan judicial system for four months, which is significantly longer than the “few days” deemed reasonable by the Human Rights Committee.⁶³ Until their release in 2007, the Benghazi Six endured eight years of imprisonment due to delays in the Libyan judicial system.

ii. Libya Violated Article 14 of the ICCPR

Libya violated Article 14(1) of the ICCPR by failing to create a “fair, independent and impartial tribunal.”⁶⁴ The Court ignored the weight of testimony of international researchers who presented evidence demonstrating the HIV infection occurred before the workers arrived in Libya. The researchers also demonstrated that many

of the infected children had Hepatitis B and C, which tended to show that unsanitary practices in the hospital, rather than the deliberate acts of the Benghazi Six, caused contraction of HIV.⁶⁵

Libya violated Article 14(3)b by failing to provide the medical personnel access to counsel until February 2000, after their initial trial started.⁶⁶ The three-month period between the arrest of the Benghazi Six and their access to counsel of their own choosing exceeded the reasonable 24 hour period required by the United Nations Special Rapporteur.⁶⁷ Libya also violated Article 14(3)g by utilizing torture tactics, such as beatings and electrocution to extricate confessions from the Benghazi Six.⁶⁸

iii. Libya Violated Article 7 of the ICCPR and Article 2 of the Convention Against Torture and Other Cruel and Inhuman Treatment

Libya violated both ICCPR Article 7 and Article 2 of the Convention Against Torture and Other Cruel, Inhuman Treatment (CAT), which expressly prohibits the use of torture.⁶⁹ Libya deliberately used physical and mental abuse to extricate information from the Benghazi Six.⁷⁰ Interviews conducted by Amnesty International and the Human Rights Watch document severe abuse, including electric shocks, beatings, threats by barking dogs, rape, and *falaqa*,⁷¹ all of which are considered torture under the definition set forth in the ICCPR. Under the pressure of the abuse, the Benghazi Six confessed to the alleged crimes.⁷²

In failing to adopt legislative measures to criminalize torture or to investigate the allegations of torture, Libya violated Article 2(1) of the CAT.⁷³ The prosecution appointed a Libyan doctor who found that all six were tortured.⁷⁴ The prosecutor ignored these findings, however, and instead employed another Libyan doctor to refute the original doctor's conclusions.⁷⁵ Libya's failure to fully investigate the claims of torture and attempts to circumvent proper judicial measures violate the CAT.⁷⁶ Ten Libyans involved in the torture of the Benghazi Six were tried in June 2005.⁷⁷ A Tripoli Court acquitted eight police officers, a translator, and a doctor, of allegations of torture.⁷⁸

iv. Libya Violated the International Labour Organization's Convention on Protection of Migrant Workers and Their Families

Both Bulgaria and Libya are signatories to the Migrant Workers' Convention and their families.⁷⁹ The Convention, which protects migrant workers, protects the Benghazi Six because they entered the country legally to work in the Al-Fateh hospital. Libya

violated Article 10 of the Convention, which prohibits all forms of torture against migrant workers, when it subjected the Benghazi Six to abuse and inhumane treatment.⁸⁰ In condoning the use of torture, Libya violated Article 16(2), which grants migrant workers freedom from injury by the state.⁸¹ Libya violated Article 16(4) when it arbitrarily arrested the Benghazi Six.⁸² Libya also violated Article 16(7), which allows migrant workers to notify, communicate, and meet with their consular representatives.⁸³ Libya did not notify the Bulgarian embassy of the detention of the Benghazi Six until February 1999, did not specify the reasons for their detention,⁸⁴ and precluded access to their consular representatives, violating Article 16(7)c.⁸⁵

B. The Failure of Medical Neutrality in the Case of the Benghazi Six

i. Conflict Neutrality Does Not Apply to the Case of the Benghazi Six

While the Benghazi Six have no protection as medical personnel under current international law, if this were a conflict situation, the Benghazi Six could be protected as medical personnel under the Geneva Convention.⁸⁶ Further, if Libya designated the medical workers as permanent civilian medical staff under Article 8(c) of the Additional Protocol I, they would receive full immunity.⁸⁷ If imprisoned, they would be subject to all protections available to prisoners of war, including right to fair treatment and freedom from torture, rape, and abuse.⁸⁸

If the Benghazi Six entered the country as part of a non-governmental organization and Libya consented to their presence in the country, they would be recognized under international medical neutrality as part of a non-governmental agency.⁸⁹ Both international and non-international conflicts require humanitarian societies to obtain consent prior to entry.⁹⁰

ii. Conflict-Defined Neutrality Contravenes Historical Intent

Conflict-defined medical neutrality no longer meets the objectives envisioned by the founders of the Geneva Convention. The goal of medical neutrality, as defined in the original Geneva Convention, is to ensure that medical personnel have the necessary protection to eliminate suffering and deliver health care in situations of mass casualties,⁹¹ including both man-made and natural disasters.⁹²


The Benghazi Six could have recourse if the international community recognized that the intent of medical neutrality was to instill humanity in the population and is not limited to the governance of war.⁹³ The Council on Foreign Affairs recently noted that, similar to other African nations, Libya's struggle with HIV is both a health disaster and a security concern.⁹⁴ From a conflict perspective, the HIV epidemic in Libya could fall under the protections of international humanitarian law. Yet, even this classification would fail to grant medical neutrality to the Benghazi Six because they are not part of an official organization, such as a non-governmental organization or the Red Cross.⁹⁵

iii. Conflict-Defined Neutrality Fails to Protect Medical Personnel

International law does not recognize the current situation in Libya as falling within the confines of international humanitarian law. This is not the first time, however, that violations of medical neutrality occurred in non-conflict situations, illustrating that, by inherent nature, conflicts alter the protections for medical personnel.⁹⁶ For one, conflicts today are no longer limited to battles between formerly recognized state armies. They instead take place within countries, involve non-state actors, and often lead to civilian engagement and casualties.⁹⁷ Moreover, guerrilla warfare often occurs without recognition from the international community.⁹⁸ As a result of the secrecy of the conflict and international law's emphasis on obtaining the consent of sovereign nations prior to entry, many conflicts do not invoke the protections of international medical neutrality.⁹⁹ In the case of the Benghazi Six, the Additional Protocol II would not apply, even though Libya is an unstable country, because the amount of violence and the violation of human rights laws do not invoke the protections of international humanitarian laws.¹⁰⁰

iv. Future of International Law: Conflict-Defined Neutrality Leads to a Clash between International Sovereignty and Medical Ethics

In the future, medical personnel in the position of the Benghazi Six must monitor international breeches of medical neutrality to condemn the persecution of medical professionals in non-conflict situations.¹⁰¹ Medical neutrality, unlike other concepts in international humanitarian and human rights law, directly conflicts with international regulations.¹⁰² Organizations such as *Médecins Sans Frontières* (MSF) consequently choose to ignore international law and instead abide by the principles of medical ethics, which require medical personnel to deliver treatment to all individuals.¹⁰³ In Turkey, Liberia, Somalia, and Sudan, MSF physicians delivered humanitarian aid without the consent of the government or separatist factions.¹⁰⁴ In these situations, MSF medical personnel practiced medicine without the protection of medical neutrality, which often resulted in the death, torture, and kidnapping of medical staff.¹⁰⁵ In contrast, the Benghazi Six entered Libya legally with consent to practice medicine in the country.¹⁰⁶ Though they complied with international and domestic norms, the Benghazi Six still fell victim to the national conflict.¹⁰⁷



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IV. Recommendations

A. The United Nations Should Codify International Protections for Medical Personnel

The international community needs to take additional measures to address the unique position of medical personnel and their role in international health and human rights.¹⁰⁸ In 1949, the World Medical Association developed the *Declaration of Geneva* which codified the ethical responsibilities detailed in the *Oath of Hippocrates*.¹⁰⁹ This declaration requires medical professionals to adhere to the same ethical standards in both times of war and peace.¹¹⁰ In the wake of the Nuremberg disaster, the World Medical Association also adopted the *International Code of Medical Ethics* to articulate international ethical standards.¹¹¹

The United Nations General Assembly adopted the *Principles of Medical Ethics*, which is “relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment and punishment.”¹¹² Though it is recognized by the international community, this resolution does not legally bind United Nations members and signatories to adhere to its principles.¹¹³

Local governments accuse medical organizations of infringing on domestic jurisdiction, but the medical personnel respond that they have a higher obligation under the Hippocratic Oath to assist those in need.¹¹⁴ In response, the MSF, along with the International Federation of Human Rights, developed the *Charter for the Protection of Medical Missions*.¹¹⁵ This charter acknowledged the international right to health care and medical assistance, calling for a “no-border” policy where medical missions could freely deliver medical assistance without concern for their own safety and without violating national or local laws.¹¹⁶ This charter aligns the goals and obligations of the medical community with those of international law by outlining the obligations of medical personnel and their right to protection during their missions.¹¹⁷ The charter mandates that countries, rebel groups, and government organizations release any medical personnel captured in the course of conflict.¹¹⁸ The charter also reinforces the ICRC protections and the ethical obligations of medical personnel.¹¹⁹ The Council of Europe approved the resolution on June 30, 1988.¹²⁰ The charter for the Protection of Medical Missions has yet to be adopted, but the World Health Assembly has drafted a similar charter, entitled *Protection of Medical Missions During Armed Conflict*,¹²¹ which reiterates the protections

afforded to medical personnel under the Geneva Convention and the Additional Protocols.¹²²

The 49th World Medical Association General Assembly adopted a proposal for *A Rapporteur on the Independence and Integrity of Health Professionals* that acknowledges the heightened dangers for and responsibilities to international medical professionals.¹²³ It requests the establishment of a UN rapporteur to protect health professionals who are in danger due to their professional actions.¹²⁴ This proposal is the most comprehensive analysis of the problem because it recognizes the need for international protections for and obligations of medical professionals.

B. Creation of an International Medical Tribunal to Address Violations of Medical Neutrality

These resolutions recognize the necessity for an international body to regulate medical personnel that would act beyond the scope of the Special Rapporteur on Health Professionals by creating an international medical tribunal.¹²⁵ Others have proposed the creation of an international medical tribunal to address egregious human rights abuses in the medical context.¹²⁶ A medical tribunal should not only address cases where physicians were criminally involved in medical negligence but should also set forth international regulations and a code of ethics to which all physicians should adhere.¹²⁷ Further, the international tribunal should hear all cases involving alleged violations and abuses of medical neutrality and subsequently deliver independent findings that are binding on all countries which recognize the tribunal’s authority. More importantly, an international medical tribunal would provide structure and protection for groups such as MSF and others that often violate state sovereignty while providing humanitarian aid.

An international tribunal would serve as both the protector and arbiter of justice in the delivery of international health and humanitarian aid, and would address concerns that blanket neutrality gives medical personnel too much immunity. A tribunal could seamlessly be implemented based upon the international community’s past experiences. For instance, a tribunal was successfully convened after World War II to try Nazi physicians for their participation in torture and human experimentation.¹²⁸

A medical tribunal could also hear allegations of abuse, medical malpractice, and violations of medical neutrality, thereby creating a centralized depository for regulating international medicine. This would provide

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accountability for legal and ethical violations as well as protection for medical personnel. Further, it would codify detailing the obligations of and protections for medical personnel.¹²⁹

V. Conclusion

Throughout history, medical personnel have played a unique and important role during wartime. The earliest versions of the Geneva Conventions recognized their fundamental role in aiding the sick and wounded in conflict. Given the shifting nature of health, war, and international conflict, however, it is clear that the legal protections provided to medical personnel during armed and non-armed conflict should be re-evaluated.

The international community must recognize that codification of international ethical obligations and protections for medical workers will ensure that medical personnel have the necessary legal tools to safeguard their work. Absent such protections, medical professionals may find themselves in the situation of the Benghazi Six, subject to the political and legal whims of an unstable democracy without international legal recourse. The situation of the Benghazi Six should send a strong message to the international medical community by exposing the weaknesses in the international safety net that could crush the spirit of humanitarian aid.

Addendum

After the completion of this article, the Benghazi Six were released on July 24, 2007. The release was the result of immense political pressure from the European Union, France, and England. The French President's wife, Cécilia Sarkozy, negotiated the release of the prisoners with Colonel Muammar el-Qaddafi. Reports indicate that el-Qaddafi was persuaded to release the prisoners by his wife and daughter as well. The final agreement entailed payment of \$1 million to each of the victims' families, amounting to \$460 million. The European Union encouraged member countries to forgive Libya's debt and contribute to an international fund that will support the victims and their families. After eight years and enduring torture, abuse, and uncertainty towards their fate, the Benghazi Six finally returned home.¹³⁰

1 See Laurie Garrett, *Six Imprisoned Health-Care Workers in Libya Are Pawns in a Far Larger Strategic Game*, COUNCIL ON FOREIGN RELATIONS, Oct. 26, 2006, available at http://www.cfr.org/publication/11821/six_imprisoned_health_care_workers_in_libya_are_pawns_in_a_far_larger_strategic_game_with_enormous_repercussions.html?breadcrumb=%2Fissue%2F89%2Fhuman_rights (last visited October 1, 2007) (asserting that the conviction of the Benghazi Six reflects larger geopolitical issues between Libya and the western world, the conflict between the scientific community, and the international implications of the spread of HIV).

2 See Michel Thieren, *Libyan Justice: Medicine on Death Row*, OPEN DEMOCRACY, Dec. 19, 2006, available at http://www.opendemocracy.net/globalization-vision_reflections/libya_bulgaria_4200.jsp (last visited Oct. 1, 2007) (maintaining that the Benghazi Six endured a "judicial nightmare").

3 See generally American Association for the Advancement of Science Website, AAAS Human Rights Action Network, <http://shr.aaas.org/aaashran/> (last visited Oct. 10, 2007) (documenting worldwide cases of human rights violations of medical professionals).

4 See George J. Annas & Michael A. Grodin, *Medical Ethics and Human Rights: Legacies of Nuremberg*, 3 HOFSTRA L. & POL'Y SYMP. 111, 113 (1999) (concluding that the 1946 trial of Nazi doctors led to the creation of the Nuremberg Code, which outlines ethics for the treatment of human being in medical experiments).

5 See Principle of Medical Ethics Relevant to the Role of Health Personnel,

Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, Annex, U.N. Doc. A/37/51 (Dec. 18, 1982) (emphasizing the "contravention of medical ethics" created when medical personnel interact with a prisoner for a purpose other than evaluating, improving, or protecting their physical or mental health).

6 See Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field art. 19, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I] (allowing enemy parties to employ medical personnel to aid the wounded and sick).

7 See Victor W. Sidel, *The Roles and Ethics of Health Professionals in War*, in WAR AND PUBLIC HEALTH 281, 282 (Barry S. Levy and Victor W. Sidel eds., 1997) (observing the conflict of interest between physicians as impartial healers and allegiance to their country).

8 See Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 1(2), (Dec. 7, 1978), 1125 U.N.T.S. 609 [hereinafter Additional Protocol II] (reiterating that random acts of violence within a country are not conflicts as defined by international law).

9 See YVES BEIGBEDER, THE ROLE AND STATUS OF INTERNATIONAL HUMANITARIAN VOLUNTEERS AND ORGANIZATIONS: THE RIGHT AND DUTY TO HUMANITARIAN ASSISTANCE 348 (Martinus Nijhoff 1991) (stressing that medical organizations break the law when they enter a country without permission); see generally, International Committee of the Red Cross, International Humanitarian Law and Human Rights Law, available at http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/section_ihl_and_human_rights (last visited Mar. 2, 2007) (comparing international humanitarian law, which exclusively regulates armed conflict, and international human rights law, which applies in both war and peacetime).

10 See Michael L. Gross, *From Medical Neutrality to Medical Immunity*, 9 AMERICAN MED. ASS'N J. OF ETHICS 718, 719 (2007), available at <http://virtualmentor.ama-assn.org/2007/10/mhst1-0710.html> (last visited Oct. 10, 2007) ("Nonmilitary medical personnel required immunity because they were, in fact, neutral, unarmed, and incidental to the war.")

11 See *Six Imprisoned Health-Care Workers*, supra note 1 (decrying the validity of the charges against the foreign workers when local medical personnel believed that the unsanitary reuse of syringes caused the HIV transmission).

12 See Int'l Gay and Lesbian Human Rights Commission (IGLHRC), Action Alert: AIDS Panic in Libyan Arab Jamahiriya: Medical Professionals Charged in "Doctors' Plot" Could Face Death Penalty, available at <http://www.bghelsinki.org/press/2000/en/11-03.htm> (last visited Sept. 17, 2007) [hereinafter IGLHRC] (noting that Libya released the Polish, Hungarian, and Filipino workers based on agreements with their respective countries).

13 See *id.* (stressing that Libya released the Libyan medical workers, and held the six foreign workers without bail).

14 See British Broadcasting Corporation, *Timeline: Bulgarian Medics Trial* (Dec. 19, 2006), available at <http://news.bbc.co.uk/2/hi/africa/6192439.stm> (last visited Sept. 17, 2007) [hereinafter *Timeline*] (providing a timeline for the Bulgarian medical workers' trials which began in February 2000, one year after their arrest).

15 See IGLHRC, supra note 12 (condoning the ten month period in which the Benghazi Six did not have access to legal representation).

16 See *id.* (observing Libya's claim that the foreign medical workers compromised state security through the deliberate transmission of HIV).

17 See Declan Butler, *Molecular HIV Evidence Backs Accused Medics* 444 NATURE 2006, 658-59 (2006) (reiterating that independent genetic information traced the mutations of the outbreak to strains from West Africa, which indicates that natural introduction combined with poor hygiene at the Al-Fateh hospital caused the HIV outbreak).

18 See Laurie Garrett, Council on Foreign Relations, HIV and National Security: Where Are the Links? 35 (2005), http://www.cfr.org/content/publications/attachments/HIV_National_Security.pdf (last visited Oct. 10, 2007) [hereinafter HIV and National Security] (finding that Libya and other countries view HIV as a security threat that is deliberately spread by other nations).

19 See e.g., BRITISH MED. ASSOCIATION, THE MEDICAL PROFESSION & HUMAN RIGHTS: HANDBOOK FOR A CHANGING AGENDA 248-49 (Zed Books 2001) (providing that Turkish physicians who treat Kurdish dissidents are

threatened, imprisoned, and possibly murdered as an example of a breach in medical neutrality).

20 See Protocol I Additional to the Geneva Conventions of 12, Aug., 1949, and Relating to the Protection of Victims of International Armed Conflict, art. 8(c) Dec. 7, 1978, 1125 U.N.T.S. [hereinafter Additional Protocol I] (defining medical personnel as "those persons assigned, by a Party to the conflict" for medical purposes, including Red Cross personnel, medical transport units, and other recognized volunteer aid societies).

21 See e.g., Frits Kalshoven, *International Humanitarian Law and Violation of Medical Neutrality in Violation of Medical Neutrality* 21, 21 (G.L. Wackers & C.T.M. Wennekes eds., 1992) (emphasizing that neutrality relates both to the duty of medical personnel during wartime as well as the duty of others to respect and protect medical personnel in times of danger).

22 See BRITISH MED. ASS'N, *supra* note 19, at 250 (analyzing the limits of medical neutrality to non-traditional types of international and domestic conflicts).

23 See e.g., International Convention on the Protection of Rights of All Migrant Workers and Members of their Families, arts. 58, 59, 60, 61, 62, 63, July 1, 2003, G.A. res. 45/158, annex, U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (Jul. 1, 2003) [hereinafter Migrant Workers' Convention] (failing to provide a special designation for medical personnel in its special categories of migrant workers).

24 See Stephen Bach, *International Migration of Health Workers: Labour and Social Issues* 1 (International Labour Office, Working Paper No. 209, July 2003), <http://www.ilo.org/public/english/dialogue/sector/papers/health/wp209.pdf> (documenting international migration of health workers and the need for international standards).

25 See e.g., Migrant Workers' Convention, *supra* note 23, art. 92 (codifying protections for migrant workers); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (June 26, 1987) [hereinafter Convention Against Torture] (prohibiting all forms of torture against all individuals); International Covenant on Civil and Political Rights art. 9, March 23 1976, 999 U.N.T.S. 171 [hereinafter ICCPR] (outlining basic political and civil rights, such as the right to a fair and independent judiciary, the right to be free from arbitrary detentions and the right to counsel); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3 (January 3, 1976) (recognizing equality for men and women and asserting freedom from discriminatory practices); Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (delineating basic principles of equality, life, and liberty for all individuals).

26 See ICCPR, *supra* note 25, art. 9(1).

27 See Reed Brody, *The United Nations Creates a Working Group on Arbitrary Detention* 85 AM. J. INT'L 709, 713 (quoting the United Nations Working Group on Arbitrary Detention that "arbitrary is not synonymous with illegal" and listing detaining without a judicial warrant, kidnapping of national residents from abroad and forcing return to homeland, prolonging a detention after completion of a sentence, and detaining by reason of their political views as examples).

28 See ICCPR, *supra* note 25, art. 9(3); see also United Nations Human Rights Committee, General Comment 8, Article 9, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 2, U.N. Doc. HR/GEN/Rev.1 at 8 (1994) [hereinafter General Comment 8] (defining reasonable amount of time as to "not exceed a few days").

29 See ICCPR, *supra* note 25, art. 14(1) (stating that all individuals are entitled to a free, impartial, and competent trial); see also United Nations Human Rights Committee, General Comment 13, art. 14 in Compilation of General Comments and Recommendations Adopted by Human Rights Treaty Bodies U.N. Doc. HR/GEN/Rev.1 at 14, paras. 8-9 (1994) available at <http://www1.umn.edu/humanrts/gencomm/hrcom13.htm> (last visited Sept. 19, 2007) (noting the minimum guarantees of fairness and justice).

30 See ICCPR, *supra* note 25, art. 14(3)(b); see also Amnesty Int'l, *Fair Trials Manual*, available at http://www.amnestyusa.org/international_justice/fair_trials/manual/3.html (last visited Mar. 1, 2007) (citing the United Nations Special Rapporteur on Torture's requirement that individuals have access to counsel within twenty-four hours of arrest).

31 See ICCPR, *supra* note 25, art. 14(3)(g); see also *Fair Trials Manual*,

supra note 30, para. 9.2 (citing cases requiring the "absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt").

32 See Convention Against Torture, *supra* note 25, art. 1 (defining torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession").

33 See Convention Against Torture, *supra* note 25, art. 2(1) (requiring all parties to the Convention to take judicial, legislative, and administrative actions to prevent torture).

34 See Migrant Workers' Convention, *supra* note 23, art. 2(1)a (defining "migrant worker" as an individual engaged in "a remunerated activity in a State of which he or she is not a national").

35 See *id.* art. 92 (affording migrant workers basic human rights protections).

36 See *id.* art. 16(3).

37 See *id.* art. 16(2) (stressing that migrant workers should receive "effective protection by the State" from violence, abuse, torture from both public and private officials).

38 See *id.* art. 7(a) (affirming that migrant workers have the right to request that their home state including the right to communicate with officials his country and gain access to an attorney).

39 *Contra id.* art. 92 (ignoring the special needs and protections of health professionals who are migrant workers).

40 See *id.* art. 10 (calling for elimination of all forms of torture against migrant workers and their families including cruel, inhuman, and degrading treatment).

41 See *id.* art. 18 (prohibiting arbitrary arrest of migrant workers).

42 See generally International Committee of the Red Cross (ICRC) Website, International Humanitarian Law in Brief, available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/ihl?OpenDocument> (last visited Oct. 6, 2007) (distinguishing between the laws of war regarding when a state may actually wage war, and international humanitarian law which governs the conduct of war itself).

43 See Francois Bugnion, *The Role of the Red Cross in the Development of International Humanitarian Law: The International Committee of the Red Cross and the Development of International Humanitarian Law*, 5 CHIL J. INT'L L. 191, 191 (2004) (voicing the opinion that ICRC is the "driving force" in the creation of international humanitarian law).

44 See David P. Forsythe, *International Humanitarian Assistance: The Role of the Red Cross* 3 BUFF. JOUR. INT'L L. 237 (1996) 237 (asserting that international humanitarian laws infer "a right to humanitarian assistance").

45 See Bugnion, *supra* note 43, at 193 (stating that the original Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field proclaims that wounded combatants and medical personnel treating those combatants should be given full protection during wartime).

46 See Hans-Ulrich Baer, *International Humanitarian Law: An Introduction*, 167 MILITARY MEDICINE 8 (2002) (defining international armed conflict as armed confrontation between two or more states).

47 See Randall G. Anderson, Historical Analysis of the Geneva and Hague Conventions and Their Protection of Military Medical Personnel, Facilities, and Transport During World War I 7 (1998) (unpublished Masters of Military Art and Science thesis, Bemidji State University) (on file with the Canadian Agriculture Library) (asserting that the need for protection of medical personnel led to the development of the first Geneva Convention).

48 See e.g., Geneva Convention (I) Relative for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Oct. 21, 1950, 6 U.S.T. 3114, 75 U.N.T.S. 31 (noting that to achieve the goal of protecting the wounded, all individuals outside of combat are entitled to protection under international humanitarian law).

49 See Additional Protocol II, *supra* note 8, art. 1(1).

50 See *id.* arts. 9, 10.

51 See PERCY BORDWELL, THE LAW OF WAR BETWEEN BELLIGERENTS: A HISTORY AND COMMENTARY 86 (Chicago Callahan & Co. 1908) (asserting that the purpose behind the law of war and, specifically neutrality, was not a novel idea, but rather, driven by a "humanitarian spirit of the age").

52 See L.C. GREEN, *War Law and the Medical Profession*, in ESSAYS ON THE MODERN LAW OF WAR 489, 492 (Transnational Publishers 1988) (acknowledging that medical personnel in conflict have traditionally been considered with regard to their work to protect the wounded).

- 53 See Convention for the Amelioration of the Condition of Wounded in Armies in the Field, art. 2, Aug. 22, 1864, 129 Consol T.S. 361 (declaring neutrality for all medical personnel aiding the wounded).
- 54 See e.g., ICCPR, *supra* note 25 (overlooking the necessity of special provisions for international medical personnel).
- 55 See e.g., *id.* art. 41(1)b (permitting parties to the Convention to allege violations before the Human Rights Committee after first communicating with the offending party).
- 56 See *id.* art. 9 (prohibiting arbitrary arrest, detention and deprivation of liberty).
- 57 See Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, 7 (June 9, 2004), <http://www.unhchr.ch/pdf/report.pdf> [hereinafter Ratification] (documenting Libya's accession to the ICCPR on Mar. 23, 1976, and Bulgaria's ratification of the ICCPR on Mar. 23, 1976).
- 58 See ICCPR, *supra* note 25, art. 9(1).
- 59 See European Parliament, *Resolution on the Conviction and Imprisonment by Libya of Five Bulgarian Nurses and a Palestinian Doctor*, Eur. Parl. P6-TA-2007 para. 3, available at <http://www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=P6-TA-2007-0007&language=EN> (last visited Oct. 6, 2007) (voicing Libya's disregard for the findings that the HIV virus was present prior to the Benghazi Six's arrival in Libya and that "strong evidence of the innocence of the defendants has been disregarded and ignored").
- 60 See Brody, *supra* note 27, at 713 (citing to the Human Rights Committee's belief that "arbitrary is not to be equated with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability").
- 61 See Butler, *supra* note 17, at 658-59 (2006) (providing DNA forensics that show the strain of HIV contracted by the children in the Al-Fateh hospital were already present and spreading in the mid-1990s after the Benghazi Six arrived in Libya in 1998).
- 62 See Calling on the Government of Libya to Review Legal Actions Taken Against Bulgarian Medical Workers H.R. Res. 733, 108th Cong. (2004) (condemning the delay in the trial of the Benghazi Six).
- 63 See General Comment 8, *supra* note 28 (reiterating that reasonable detention is no more than a few days); see also Bulgarian News Agency Website, Chronology of Events, available at <http://www.bta.bg/site/libya/en/02chronology.htm> (last visited Sept. 20, 2007) [hereinafter Bulgarian News Agency] (demonstrating that Libya did not grant access to defense attorneys until after the charges were filed).
- 64 See Butler, *supra* note 17 (stressing that the Libyan court prohibited the submission of evidence exonerating the Benghazi Six).
- 65 See *id.* (tracing the family tree of the HIV infection).
- 66 See Bulgarian News Agency, *supra* note 63 (finding that after many negotiations, Libya finally agreed to allow the Benghazi Six to choose their own lawyer).
- 67 See *Fair Trials Manual*, *supra* note 34, para. 20.3 (emphasizing that the Human Rights Committee held that in a capital case, the trial should not proceed if the defendant is without counsel).
- 68 See Amnesty Int'l, *Libya: Time to Make Human Rights a Reality*, 34, AI Index MDE 19/002/2004, April 2004, available at <http://web.amnesty.org/library/index/engmde190022004> (last visited Oct. 1, 2007) [hereinafter Amnesty Int'l] (describing how the nurses confessed in order to stop the electric shock torture).
- 69 See ICCPR, *supra* note 25, art. 7 (prohibiting all forms of torture); see also Convention Against Torture, *supra* note 25, art. 1 (defining torture as any physical or mental suffering for the purposes of obtaining a confession).
- 70 See MICHAEL GARCIA, U.N. CONVENTION AGAINST TORTURE (CAT): OVERVIEW AND APPLICATION TO INTERROGATION TECHNIQUES 2 (Congressional Research Service, 2004) <http://www.fas.org/irp/crs/RL32438.pdf>, (noting the Convention Against Torture's definition of torture as "systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain").
- 71 See Amnesty Int'l, *supra* note 68, at 34 (describing *falaqa* as beating the soles of the feet with electric cables).
- 72 See HUMAN RIGHTS WATCH, WORDS TO DEEDS: THE URGENT NEED FOR HUMAN RIGHTS REFORM 49 (2006), <http://hrw.org/reports/2006/libya0106/> [hereinafter HUMAN RIGHTS WATCH] (interviewing nurse who stated that Libyan interrogators hit her with an electric stick on her breast and genital area, and said, "we were ready to sign anything just to stop the torture").
- 73 See Convention Against Torture, *supra* note 25, art. 12; see also ICCPR, *supra* note 25, art. 2.
- 74 See Amnesty Int'l, *supra* note 68, at 35 (stressing the lack of impartiality in the judicial treatment of the Benghazi Six).
- 75 See *id.* ("This evidence was subsequently refuted in court by another Libyan doctor, called to give expert opinion, who argued that it would have been impossible to identify traces of torture after so much time had passed but did not examine the defendants himself.")
- 76 See *id.* (noting that the doctor never actually examined the prisoners).
- 77 See HUMAN RIGHTS WATCH, *supra* note 72, at 50 (quoting Libyan policeman that "[t]hey were treated well and enjoyed all legal rights"). *Contra*, Dimitar Tabakov, *Bulgaria Sues Nurses' Torturers*, NEWS.BG (Jan. 31, 2007), available at http://international.libox.bg/news/id_137911897 (last visited Oct. 6, 2007) (citing to Bulgarian authorities who believe that they have sufficient evidence to try the Libyan police for committing torture).
- 78 See HUMAN RIGHTS WATCH, *supra* note 72, at 50.
- 79 See Ratification, *supra* note 57.
- 80 See Migrant Workers' Convention, *supra* note 23, art. 10.
- 81 See *id.* art. 16(2).
- 82 See *id.* art. 16(4).
- 83 See *id.* arts. 16(7)a, 16(7)b, 16(7)c.
- 84 See Bulgarian News Agency, *supra* note 63 (indicating that the Bulgarian embassy went a week without official notification of the detention of the Benghazi Six).
- 85 See Amnesty Int'l, *supra* note 68, at 33 (recounting that during the first nine months of their imprisonment, the Benghazi Six met with Bulgarian authorities only three times).
- 86 See generally Geneva Convention I, *supra* note 6, arts. 24-27).
- 87 See BEIGBEDER, *supra* note 9, at 338 (justifying not granting immunity to medical personnel who do not receive special assignment from the State party in order to ensure that the country could control and monitor any abuses of the medical privilege).
- 88 See Additional Protocol I, *supra* note 20, art. 21 (citing to the protections in Geneva Convention I, Article 35 that medical personnel could not be fired on, nor prevented from, carrying out their work in the hospital); see also Geneva Convention I, *supra* note 6, art. 28 (delineating that captured medical personnel are not considered prisoners of war, but should be entitled to services in "accordance with their professional ethics").
- 89 See Geneva Convention I, *supra* note 6, art. 27 (requiring members of a neutral volunteer society to not only obtain consent prior to intervention but to also notify the opposing party).
- 90 See BEIGBEDER, *supra* note 9, at 345.
- 91 See BRITISH MED. ASS'N, *supra* note 19, at 244 (affirming the origin of medical neutrality as to ensure non-discrimination in the provision of medical care).
- 92 See Laura Lopez, *Uncivil Wars: The Challenge of Applying International Humanitarian Law to Internal Armed Conflict* 69 N.Y.U. L. REV. 916, 919 (stating that the original intent of international humanitarian law "lie[s] in the suffering it seeks to prevent").
- 93 See BORDWELL, *supra* note 51, at 257-58 (interpreting the Geneva Convention of 1909 to assume that volunteer societies could use the protection and immunity of the Red Cross emblem in both war and peace where it is necessary).
- 94 See e.g., HIV and National Security, *supra* note 18, at 35 (documenting the use of HIV as a weapon and accusation, such as in India where the government claimed that the "promiscuous Pakistanis" used the deliberate infections of HIV as part of their "Islamic jihad").
- 95 See BEIGBEDER, *supra* note 9, at 343 (reiterating that medical volunteers must be attached to a neutral society recognized by the parties to the conflict).
- 96 See BRITISH MED. ASS'N, *supra* note 19, at 249-50 (documenting violations of medical neutrality that fall outside international humanitarian law).
- 97 See *id.* at 242 (emphasizing that civilian deaths in non-traditional conflicts were greater than military personnel casualties).
- 98 See BEIGBEDER, *supra* note 9, at 347-48 (stating that this type of warfare is effective because it is covert).
- 99 See BRITISH MED. ASS'N, *supra* note 19, at 250 (citing to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities that the "main difficulties are in determining which situations the

rules regulating non-international armed conflict become operable, and the fact that some situations of internal violations fall outside the law”).

100 See Amnesty Int’l, *supra* note 68, at 6-7 (documenting arbitrary arrests, detentions, and disappearances in Libya in the late 1980s).

101 See BRITISH MED. ASS’n, *supra* note 19, at 251 (voicing concern for the absence of international bodies available to report on medical neutrality violations fall outside of the Geneva Convention and the Additional Protocols).

102 See BEIGBEDER, *supra* note 9, at 348 (emphasizing that medical personnel’s ethical obligations to take care of those in need directly conflicts with the current international law’s recognition of state sovereignty).

103 See Roelf Padt, The Meaning of Medical Neutrality and its Consequences in VIOLATION OF MEDICAL NEUTRALITY, 48, 53 (G.L. Wackers & C.T.M. Wennekes eds., 1992) (asserting that MSF believe that medical assistance prevails over the right of national sovereignty).

104 See *id.* at 49-50 (describing situations where MSF volunteers entered countries without the protection of international medical neutrality).

105 See BEIGBEDER, *supra* note 9, at 271 (noting instances where MSF volunteers entered countries without the consent of the government).

106 See IGLHRC, *supra* note 12 (stressing that the Benghazi Six entered Libya legally as guests for the purpose of working and studying).

107 See BEIGBEDER, *supra* note 9, at 348 (noting that medical associations who choose to adhere to ethics over international sovereignty find themselves victims).

108 See Padt, *supra* note 103, at 51 (finding that because medical neutrality has no meaning without the consent of sovereign governments, it often fails to protect medical personnel).

109 See BEIGBEDER, *supra* note 9, at 339.

110 See *id.*

111 See The World Medical Ass’n Website, World Medical Association International Code of Medical Ethics, <http://www.wma.net/e/policy/c8.htm> (enforcing the notion that physicians should act solely towards the best interests of the patient).

112 See BEIGBEDER, *supra* note 9, at 340.

113 See *id.* at 349 (distinguishing between the principles of the United Nations Resolution and the reality of medical practice where no universal standards apply and adherence to international humanitarian law is limited to agreement by the respective parties involved in the actual conflict).

114 See *id.* (arguing that medical personnel should have a right to protection based on their roles as medical personnel, rather than as individuals).

115 See *id.* at 348.

116 See *id.*

117 See BEIGBEDER, *supra* note 9, at 348 (calling for across the board protection for all humanitarian efforts).

118 See *id.* (recognizing the necessity of dealing with non-state actors in modern conflict situations).

119 See *id.*

120 See *id.* at 349 (noting that the resolution urges respect for the ICRC activities).

121 See World Health Assembly, Protection of Medical Missions During Armed Conflict, World Health Assembly Resolution A55/VR/9, http://www.who.int/gb/ebwha/pdf_files/WHA55/ewha5513.pdf (reaffirming principles of medical neutrality in light of an increase in attacks on medical personnel).

122 See *id.* (emphasizing the importance of adherence to the Geneva Conventions, and the protective status of medical personnel during armed conflict).

123 See World Medical Association, Proposal for a United Nations Rapporteur on the Independence and Integrity of Health Professionals (Nov. 1997), available at <http://www.wma.net/e/policy/h19.htm> (last visited Oct. 6, 2007) (stressing that physicians should have freedom of movement in both conflict and non-conflict situations).

124 See *id.* (encouraging the reporting of human rights violations by health professionals).

125 See Annas, *supra* note 4, at 119-20 (describing the formation of an international medical tribunal).

126 See *id.* (stressing the importance of using criminal sanctions against physicians who contravene international law and medical ethics).

127 See *id.* at 120-21 (outlining the Tribunal’s functions to include hearing cases, developing international regulations, and, if necessary, spurring public

condemnation where international law does not exercise jurisdiction).

128 See Benjamin Mason Meier, *International Protection of Persons Undergoing Medical Experimentation: Protecting the Right of Informed Consent*, 20 BERKELEY J. INT’L L. 513, 523 (noting that two hundred German physicians took part in the alleged medical experimentation and torture).

129 See Sidel, *supra* note 7, at 282 (stressing how ethical guidelines require physicians to treat all individuals, while military and international codes reject such widespread impartiality and neutrality).

130 See Matthew Brunwasser & Elaine Sciolino, *Libya’s Release of 6 Prisoners Raises Criticism*, N.Y. TIMES, July 25, 2007, available at http://www.nytimes.com/2007/07/25/world/europe/25libya.html?pagewanted=1&_r=1&emc=eta1 (last visited Oct. 20, 2007).